

1987

# Helen Schumann v. David Barber : Brief of Petitioner

Utah Court of Appeals

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Helen Schumann; Pro Se.

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DOCKET NO. 870177-CA

IN THE UTAH COURT OF APPEALS

No. 870177-CA

#146

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APPEAL FROM THE SMALL CLAIMS  
COURT OF THE FIFTH CIRCUIT COURT,  
SALT LAKE DEPARTMENT, STATE OF UTAH

---

HELEN SCHUMANN,

Plaintiff, Respondent,

against

DAVID BARBER,

Defendant, Petitioner.

---

BRIEF FOR THE PETITIONER

---

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IN THE UTAH COURT OF APPEALS

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No. 870177-CA

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APPEAL FROM THE SMALL CLAIMS COURT  
OF THE FIFTH CIRCUIT COURT  
SALT LAKE DEPARTMENT, STATE OF UTAH

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HELEN SCHUMANN,

Plaintiff, Respondent,

- against -

DAVID BARBER,

Defendant, Petitioner.

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BRIEF FOR THE PETITIONER

---

Jurisdiction

Jurisdiction is vested in this Court pursuant to § 78-6-10 (2) of the Utah Code Ann., as amended 1986, providing that matters heard in the Small Claims Department of the Circuit Court may be appealed by the defendant to the Court of Appeals. This appeal comes from a final judgment by the Small Claims Court of the Fifth Circuit wherein that Court denied the Defendant's Motion to Set Aside the Default Judgment.

### Case History

This appeal comes from a small claims action commenced on the 13th day of February 1987, by the Plaintiff Helen Schumann, wherein the Defendant David Barber was served on the 21st day of February, 1987. On the 4th day of March, 1987, a special appearance was made at the hearing in this matter on behalf of the Defendant, who was out of town, to request a two-day continuance from the attorney-judge pro tempore of the Small Claims Court. This request was denied.

After denial of a two-day continuance in this matter, the attorney-judge pro tempore entered a default judgment against the Defendant.

On the 23rd day of March, 1987, Judge Phillip Palmer, a duly appointed Judge of the Fifth Circuit Court, entered an Order quashing execution of judgment in this action until such time as he could hear the Defendant's motion to set aside the default judgment. Thereafter, on April 16, 1987, Judge Phillip Palmer entered an Order relinquishing the Fifth Circuit Court's jurisdiction over this matter and transferring the matter back to the Small Claims Department.

On May 5, 1987, an attorney-judge pro tempore of the Small Claims Court denied the Defendant's motion to set aside the default judgment.

This appeal challenges each of the judicial actions listed above.

Constitutional Provisions  
and Statutes Involved

The text of the following constitutional provisions and statutes relevant to the determination of the present case are set forth in appendices: U.S. Const. Amend. XIV § 1; U.S. Const. ASmend VI; Utah Const. Art. J § 7; Utah Const. Art. VIII §§ 5, 8 and 11; § 78-6-1 of the Utah Code Ann., as amended 1986; § 78-6-1.5 of the Utah Code Ann., as amended 1981; § 78-6-8 of the Utah Code Ann., as amended 1986; § 78-6-10 of the Utah Code Ann., as amended 1986.

Questions Presented

1. Was the denial of a continuance on the 4th day of March, 1987, an abuse of discretion?
2. Was the Small Claims Court's refusal to allow associate counsel to appear as an authorized agent of the Defendant on May 5, 1987 a violation of § 78-6-1(2) of the Utah Code Ann., as amended 1986?
3. Was the failure of the Small Claims Court to set aside the default judgment an abuse of discretion?
4. Did the failure of the Fifth Circuit Court to exercise supervisory authority over the Small Claims Court deny Defendant his rights to due process?
5. Is § 78-6-1.5 of the Utah Code Ann., as amended 1981, void as an unconstitutional delegation of judicial power?



### Statement of the Case

1. Defendant, David Barber ("Defendant") was served with Plaintiff's Complaint on February 21, 1987. The Defendant's business activities are very time consuming, requiring a great deal of travel and Defendant was not able to deliver the Complaint to his counsel until ten days later. When counsel was contacted by Defendant, counsel was informed by the Defendant that he would be out of town on the day of the hearing due to business. After reviewing this matter, counsel determined that a counterclaim should be filed. Counterclaims, however, must be filed at least two (2) days prior to the hearing and counsel was not able to meet this deadline.

2. Counsel for Defendant then contacted the Plaintiff and requested a two-day continuance. The Plaintiff refused this request. Counsel then contacted the Defendant and agreed to appear as an agent for the Defendant at the trial for the sole purpose of requesting a continuance from the attorney-judge pro tempore assigned to this matter. The attorney-judge pro tempore, after expressing uncertainty whether to grant the requested continuance and being unfamiliar with regular small claims court procedure, then consulted with the court clerk, not a member of the Utah Bar. After so doing, the attorney-judge pro tempore stated that should her decision prove wrong, the Defendant could appeal and, therefore, denied the Defendant's request for a continuance. The Defendant, not having time to properly prepare

for trial, or to submit his answer and counterclaim to this action, and being out of the state on the day of the trial due to business, was forced to allow a default to be entered against him.

3. On the 23rd day of March, 1987, counsel for Defendant submitted to Judge Phillip Palmer of the Fifth Circuit Court an Ex Parte Motion for an Order Staying Enforcement of the Default Judgment until such time as Judge Palmer could hear the Defendant's motion to set aside the default judgment. Judge Phillip Palmer granted the Defendant's Ex Parte Motion.

4. Thereafter, on the 1st day of April, 1987, Defendant filed his motion to set aside the default judgment on the grounds of inadvertence or excusable neglect. On April 16, 1987, representatives for Plaintiff and Defendant met with Judge Phillip Palmer in his chambers, wherein Judge Palmer stated that the Fifth Circuit Court no longer maintained a supervisory position over the Small Claims Department and that any action in this matter could only be reviewed by an attorney-judge pro tempore of the Small Claims Court. Judge Phillip Palmer then entered an Order transferring this matter back to the Small Claims Department of the Fifth Circuit Court.

5. On the 5th day of May, 1987, Defendant's motion to set aside the default judgment came on for hearing before an attorney-judge pro tempore. An associate of counsel for Defendant, a member of the California State Bar in good standing, appeared as

an authorized agent on behalf of the Defendant pursuant to § 78-6-1(2) of the Utah Code Ann., as amended 1986. The attorney-judge pro tempore, expressed uncertainty as to whether an individual could appear through an agent, and not having time to review the file or small claims court procedure prior to the hearing, refused to allow associate counsel to appear on behalf of the Defendant. Associate counsel then requested that the Court on its own motion grant a continuance wherein the uncertainty surrounding § 78-6-1(2) could be resolved or alternative counsel could appear on behalf of the Defendant. The Court refused to do so. The attorney-judge pro tempore, after stating that he did not want to become involved in a complex or drawn out proceeding and expressing his desire to make a ruling on the narrowest grounds possible in order to dispense with the matter, ruled that the Defendant had failed to appear and denied the Defendant's motion to set aside the default judgment based upon said lack of appearance. On the 11th day of May, 1987, Defendant filed his Notice to Appeal.

#### Summary of Argument

The fundamental questions presented by this appeal are (i) whether the actions of the Small Claims Court and the Circuit Court throughout the entire proceedings were an abuse of discretion and operated to deny the Defendant his constitutional right to due process; (ii) whether an authorized agent may appear before the Small Claims Court on behalf of an individual as well

as on behalf of a corporation; (iii) is the appointment by the Circuit Court of attorney-judges pro tempore to the Small Claims Courts of the Circuit Court, which court is a court of record, an unconstitutional appointment and delegation of judicial power.

The actions of the Small Claims Court in denying the Defendant's request for a two-day continuance on May 4, 1987, and the subsequent entry of default judgment, in conjunction with the refusal of Judge Phillip Palmer to entertain the Defendant's motion to set aside the default judgment on March 23, 1987, and the transfer of this matter back to the small claims department, and the refusal on the 5th day of May, 1987, to allow an associate of counsel for Defendant to appear as an authorized agent, or to grant a continuance on the Court's own motion whereby questions surrounding this matter or alternative counsel could appear for Defendant and the Court's failure to set aside the default judgment were all abuses of discretion and operated to deny the Defendant his constitutional rights of due process.

Section 78-6-1(2) of the Utah Code Ann., as amended 1986, specifically allows for persons as well as corporations to appear through authorized employees. The refusal of the Small Claims Court on May 5, 1987, to allow an associate of counsel for Defendant to appear as an authorized agent on behalf of Defendant pursuant to § 78-6-1(2), in order to present the Defendant's motion to set aside the default judgment is in direct contradiction with § 78-1-6-1(2) and hence, the Small Claims Court's

denial of the Defendant's motion to set aside the default judgment, based solely upon the Defendant's lack of personal appearance, is in error and should be reversed by this Court.

By 1986 amendment to the Utah Judicial Code, § 78-6-8 of the Utah Code Ann., as amended 1986, the small claims courts of the circuit courts are courts of record. The Utah Constitution Article VIII §§ 8 and 11, flatly require that judges pro tempore to courts of record be appointed either by the governor or chief justice of the supreme court or by special rule of the Supreme Court. Judges pro tempore of small claims courts within the circuit court are presently appointed by the Circuit Court, according to statute, § 78-6-1.5 of the Utah Code Ann., as amended 1981, and hence their appointment is a direct violation of Art. VIII §§ 8 and 11 of the Utah Constitution and, therefore, such appointments are unconstitutional and without force.

The denial of the Defendant's constitutional rights of due process by an array of abuses by the lower courts, and the unconstitutional appointment of attorney-judges pro tempore to the Small Claims Court requires that the Defendant's motion to set aside the default judgment be granted so that he may be heard in this matter and that he be allowed to submit his answer and counterclaim.

## ARGUMENT

### I.

#### The Denial of a Two-Day Continuance Was an Abuse of Discretion

Due to the Defendant's being out of town on the day set for trial, and because of the Defendant's lack of time to properly prepare a defense in this matter, or to submit his counterclaim, an associate of counsel for Defendant appeared before the small claims judge pro tempore on the day and time set for trial for the sole purpose of requesting a two-day continuance in this matter.

The attorney-judge pro tempore denied this request. In so doing, the attorney-judge pro tempore stated that she was uncertain as to whether such a continuance could be granted by the small claims court, and after consulting with the court clerk, not a member of the Utah Bar, she stated that should her denial of a continuance prove wrong, the Defendant could always appeal.

The denial of a two-day continuance is a clear abuse of discretion. As the Utah Supreme Court so succinctly stated in Interstate Excavating v. Agla Development, 611 P.2d 369, 371 (Utah 1980):

The uniform acknowledged policy of the law is to accord litigants the opportunity for a hearing on the merits, where that can be done without serious injustice to the other party.

The granting of a two-day continuance would have accorded the Defendant his constitutional right to present evidence and confront witnesses. U.S. Const. Amend VI.

A two-day continuance in this matter would not have caused injustice, nor would it have prejudiced the rights of the Plaintiff. Its denial, however, resulted in the entry of a default judgment against the Defendant and substantially prejudiced his rights in this matter. Hence, the denial of a continuance by the attorney-judge pro tempore of the Small Claims Court was a clear abuse of discretion.

## II.

### An Individual Defendant May Appear in Small Claims Court Through an Authorized Agent

Section 78-6-1(2) of the Utah Code Ann., as amended 1986, reads:

Persons or corporations may litigate actions on behalf of themselves in person or through authorized employees with or without counsel. [Emphasis added].

On May 5, 1987, an associate of counsel for Defendant, a member of the California State Bar in good standing, appeared as an authorized agent on behalf of the Defendant pursuant to § 78-6-1(2), in order to present Defendant's motion to set aside the default judgment.

The attorney-judge pro tempore presiding over this hearing stated that he was not familiar with § 78-6-1(2), as amended in 1986, and was uncertain as to whether an individual as well as a

corporation could appear through an authorized agent. After reviewing § 78-6-1(2), the attorney-judge pro tempore ruled that an individual could not appear through an authorized agent, and that §78-6-1(2) provided only for corporations to appear through an authorized employee. The attorney-judge pro tempore then refused to hear arguments in this matter and ruled that the Defendant had failed to appear and, hence, denied the Defendant's motion to set aside the default judgment based upon said lack of personal appearance by the Defendant.

The attorney-judge pro tempore's ruling flies directly in the face of § 78-6-1(2), as amended, which specifically states persons or corporations may litigate on behalf of themselves in person or through an authorized agent. The attorney-judge pro tempore's interpretation of § 78-6-1(2) is in error, and hence, the attorney-judge pro tempore's ruling denying the Defendant's motion to set aside the default judgment based upon Defendant's lack of personal appearance must be overturned as in direct violation of § 78-6-1(2).

### III.

The Refusal of the Small Claims Court to Allow the Defendant to Present His Motion to Set Aside the Default Judgment and Its Failure to Set Aside the Default Judgment Were an Abuse of Discretion

On the 5th day of May, 1987, Defendant's motion to set aside the default judgment came on for hearing before an attorney-judge pro tempore of the Small Claims Court. Because the Small Claims



Court refused to allow Defendant to appear through an authorized agent, and would not on its own motion grant a continuance wherein uncertainty surrounding representation by an authorized agent could be resolved or alternative counsel could appear on behalf of the Defendant, the Small Claims Court denied the Defendant's motion to set aside the default judgment based solely upon the Defendant's lack of personal appearance. The refusal by the Small Claims Court to grant a continuance whereby the Defendant would be allowed to present his motion to set aside the default judgment and the Court's failure to set aside the default are a clear abuse of discretion.

In Interstate Excavating v. Agla Development, 611 P.2d 369, 371 (Utah 1980), the Utah Supreme Court in vacating the judgment of the lower court, which court had refused to set aside the default judgment, stated:

However, they (default judgments) are not favored in law, especially where a party has timely responded with challenging pleadings....

The Court went on to state in dicta:

...it is to be kept in mind that access to the courts for the protection of rights and the settlement of disputes is one of the most important factors in the maintenance of a peaceable and well-ordered society.... To that end, the courts are generally indulgent toward setting aside of default judgments.

Id. at 371.

In the following this policy, the Court held:

Consistent with the objective just stated where there is doubt about whether a default should be set aside, the doubt should be resolved in favor of doing so, to the end that each party may have an opportunity to present his side of the controversy and that there be a resolution in accordance with law and justice.

Id. at 371.

The Supreme Court then vacated the lower court's order and remanded the matter back to the lower court for a hearing on the merits.

The refusal of the attorney-judge pro tempore to grant a continuance on the Court's own motion in order to assure that the Defendant could be heard and the Court's failure to set aside the default judgment are in direct contradiction to the stated policy of the law as set forth by the Utah Supreme Court in Interstate Excavating, supra, to allow all litigants the right to be heard in accordance with law and justice and to resolve all doubts in favor of the setting aside of default judgments. Hence, the ruling of the Small Claims Court is a clear abuse of discretion and should be set aside, in order that the Defendant may be heard in this matter.

#### IV.

#### Section 78-6-1.5 of Utah Code Anr., Is an Unconstitutional Delegation of Judicial Power

Section 78-6-1.5 reads in pertinent part:

If at any time public necessity and convenience will be better served by making

the small claims court available during evening hours in addition to day-time settings, the circuit court may enter an order appointing a member or members of the Utah State Bar in good standing, with the member's consent, as small claims court judge(s) pro tempore, who after being duly sworn, shall serve voluntarily and without compensation at the request of the court, shall be extended the same immunities and shall have the same powers with respect to matters within the jurisdiction of the small claims court as may be exercised by duly elected circuit judges. [Emphasis added].

Article VIII § 8 of the Utah Constitution states:

Judges of courts not of record shall be selected in a manner, for a term, and with qualifications provided by statute. [Emphasis added].

However, Article VIII § 11 of the Utah Constitution states in relevant part:

When a vacancy occurs on a court of record, the governor shall fill the vacancy by appointment .... If the governor fails to fill the vacancy within the time prescribed, the chief justice of the supreme court shall ... make the appointment.... The senate shall consider and render a decision in each judicial appointment within 30 days of the date of appointment.... [Emphasis added].

Article VIII § 4 of the Utah Constitution provides in pertinent part:

Except as otherwise provided by this constitution, the supreme court by rule may authorize retired justices and judges and judges pro tempore to perform any judicial duties.... [Emphasis added].

Hence, prior to § 78-6-8 of the Utah Code Ann. as amended in 1986, judges pro tempore of the small claims courts, which court

was not a court of record, could be appointed as provided by statute. Utah Const. Art. VIII § 11. However, by 1986 amendment to the Utah Code, § 78-6-8 of the Utah Code, as amended 1986, the small claims courts of the circuit court became courts of record, hence, the appointment of any judge pro tempore to the small claims court of the circuit court, after January 1986, can only be by appointment of the governor or chief justice of the supreme court with senate confirmation or as authorized by special rule of the supreme court. Utah Const. Art. VIII §§ 4 and 11.

Hence, the present appointment of judges pro tempore by the circuit court as provided by statute, § 78-6-1.5 of the Utah Code as amended 1981, is in direct contradiction with Article VIII §§ 4 and 11 and, therefore, these appointments are unconstitutional and without validity. Consequently, any decision rendered by a judge pro tempore of the small claims court so appointed is without binding force in law or fact.

V.

Failure of the Fifth Circuit Court to Exercise  
Supervisory Authority over The Small Claims Court  
Denied Defendant His Constitutional Rights to  
Due Process and is in Contradiction to  
§ 78-6-1 of Utah Code Ann.

On April 16, 1987, representatives for Plaintiff and Defendant appeared before Judge Phillip Palmer of the Fifth Circuit Court to have the Defendant's motion to set aside the default judgment heard, which default judgment has previously been entered by the Small Claims Court of the Fifth Circuit Court

after that Court refused to grant Defendant's two-day continuance to respond in this matter. Judge Phillip Palmer refused to entertain the Defendant's motion to set aside the default judgment and entered an Order relinquishing jurisdiction of the Fifth Circuit Court and transferring the matter back to the Small Claims Department. At the time of entering this Order, Judge Palmer stated in his chambers to representatives of the Plaintiff and Defendant that the Fifth Circuit Court no longer maintained a supervisory position over the Small Claims Department of the Fifth Circuit Court, and that any action in this matter could only be reviewed by an attorney-judge pro tempore of the Small Claims Court.

Section 78-6-1 of the Utah Code Ann. as amended 1986, provides:

There is created in the circuit courts and justice's courts of this state, a department known as the "Small Claims Court", which has jurisdiction, but not exclusive, in cases:

(a) for the recovery of money where the amount claimed does not exceed \$1,000 and where the defendant resides or the action of indebtedness was incurred in the jurisdiction of the court in which the action is maintained; ... [emphasis added].

The refusal by Judge Phillip Palmer of the Fifth Circuit Court to exercise any supervisory authority over the attorney-judges pro tempore of the Small Claims Court, a department within the Circuit Court, who exercise their position without election

or official appointment and who generally have no prior judicial experience in this area, which position is purely part-time and noncompensatory, § 78-6-1 of the Utah Code Ann. as amended 1986, is a violation of the Defendant's constitutional rights to due process of the law. Such a position by the Fifth Circuit Court, if allowed to persist, would result in a Small Claims Department of the Circuit Court whose behavior and decisions are totally unchecked and without supervision. This argument is supported by the fact that by 1986 amendment to the Code, see § 78-6-10(2) of the Utah Code Ann. as amended 1986, a trial de novo is no longer available to defendants in matters heard in the small claims department of the circuit courts, and the sole recourse from any decision rendered by a small claims court is appellate review by this Court, the filing fees and bond costs of which are approximately \$500.00.

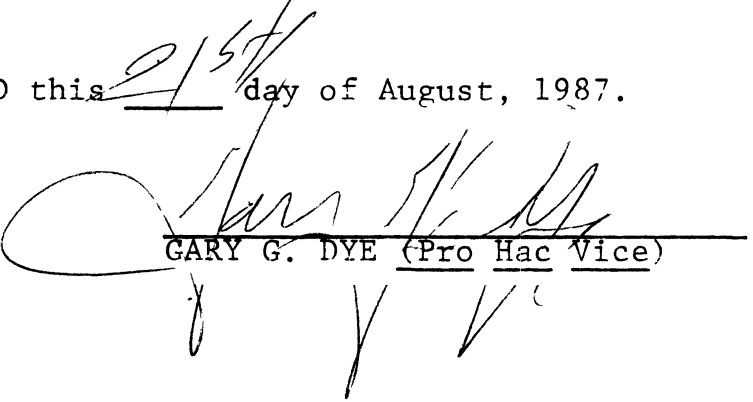
The Defendant has the constitutional right to have the law as applied to him administered in a manner that will safeguard and protect his individual rights, and to have the course of legal proceedings occur in that manner established by our system of jurisprudence for the regular enforcement and protection of an individual's rights. See U.S. Const. Amend. XIV § 1; Ut. Const. Art. 1 § 7. The refusal by Judge Phillip Palmer of the Fifth Circuit Court to exercise authority over the Small Claims Court, a department of the Fifth Circuit, which court does not have exclusive jurisdiction and is presided over solely by attorney-

judges pro tempore who do not have sufficient time to properly prepare for matters presented and often lack sufficient experience in administering the law, violated the constitutional due process rights of the Defendant to have his motion heard by a duly appointed and elected judge of the Circuit Court in order to assure a fair and reasonable trial on the merits (U.S. Const. Amend. VI), and to have his claims heard in that manner provided by law for the regular enforcement and protection of his rights.

#### Conclusion

For all the reasons set forth above, Petitioner respectfully requests that the default judgment in this matter be set aside, in order that this matter may be decided on the merits, and that Petitioner be allowed to present his answer and counterclaim in this matter.

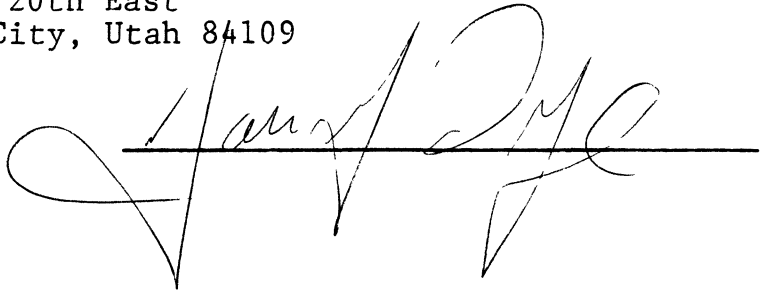
RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of August, 1987.

  
\_\_\_\_\_  
GARY G. DYE (Pro Hac Vice)

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 21<sup>st</sup> day of August, 1987, I mailed a true and correct copy of the foregoing "Appellant's Brief" by first-class mail, postage prepaid, to:

Helen Schumann  
3782 South 20th East  
Salt Lake City, Utah 84109

A handwritten signature in cursive script, appearing to read "Gary Dye", is written over a horizontal line.



## Appendix A

### CONSTITUTION OF THE UNITED STATES Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of counsel for his defense.

## Appendix B

### CONSTITUTION OF THE UNITED STATES

#### Amendment XIV

#### Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Appendix C

CONSTITUTION OF UTAH

Art. 1 Sec. 7 [Due process of law].

No person shall be deprived of life, liberty or property,  
without due process of law.

## Appendix D

### CONSTITUTION OF UTAH

#### Art. VIII

Sec. 4. [Rule-making power of supreme court - Judges pro tempore - Regulation of practice of law].

The supreme court shall adopt rules of procedure and evidence to be used in the courts of the state and shall by rule manage the appellate process. The legislature may amend the rules of procedure and evidence adopted by the supreme court upon a vote of two-thirds of all members of both houses of the legislature. Except as otherwise provided by this constitution, the supreme court by rule may authorize retired justices and judges and judges pro tempore to perform any judicial duties. Judges pro tempore shall be citizens of the United States, Utah residents, and admitted to practice law in Utah. The supreme court by rule shall govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law.

## Appendix E

### CONSTITUTION OF UTAH

#### Art. VIII

Sec. 5. [Jurisdiction of district court and other courts - Right of appeal].

The district court shall have original jurisdiction in all matters except as limited by this constitution or by statute, and power to issue all extraordinary writs. The district court shall have appellate jurisdiction as provided by statute. The jurisdiction of all other courts, both original and appellate, shall be provided by statute. Except for matters filed originally with the supreme court, there shall be in all cases an appeal of right from the court of original jurisdiction to a court with appellate jurisdiction over the cause.

## Appendix F

### CONSTITUTION OF UTAH

#### Sec. 8 (Vacancies - Nominating commissions - Senate approval).

When a vacancy occurs in a court of record, the governor shall fill the vacancy by appointment from a list of at least three nominees certified to the governor by the judicial nominating commission having authority over the vacancy. The governor shall fill the vacancy within 30 days after receiving the list of nominees. If the governor fails to fill the vacancy within the time prescribed, the chief justice of the supreme court shall within 20 days make the appointment from the list of nominees. The legislature by statute shall provide for the nominating commissions' composition and procedures. No member of the legislature may serve as a member of, nor may the legislature appoint members to, any judicial nominating commission. The senate shall consider and render a decision on each judicial appointment within 30 days of the date of appointment. If necessary, the senate shall convene itself in extraordinary sessions for the purpose of considering judicial appointments. The appointment shall be effective upon approval of a majority of all members of the senate. If the senate fails to approve the appointment, the office shall be considered vacant and a new nominating process shall commence. Selection of judges shall be based solely upon consideration of fitness for office without regard to any partisan political considerations.

## Appendix G

### CONSTITUTION OF UTAH

#### Art. VIII

#### Sec. 11. [Judges of courts not of record].

Judges of courts not of record shall be selected in a manner, for a term, and with qualifications provided by statute. However, no qualification may be imposed which requires judges of courts not of record to be admitted to practice law. The number of judges of courts not of record shall be provided by statute.

## Appendix H

### UTAH JUDICIAL CODE

78-6-1. Creation - Jurisdiction - Counsel not necessary -  
Deferring multiple claims of one plaintiff.

(1) There is created in the circuit courts and justice's courts of this state, a department known as the "SMALL CLAIMS COURT," which has jurisdiction, but not exclusive, in cases:

(a) for the recovery of money where the amount claimed does not exceed \$1,000 and where the defendant resides or the action of indebtedness was incurred within the jurisdiction of the court in which the action is to be maintained; or

(b) involving interpleader under Rule 22 of the Utah Rules of Civil Procedure, in which the amount claimed does not exceed the jurisdiction of the court.

(2) Persons or corporations may litigate actions on behalf of themselves in person or through authorized employees with or without counsel.

(3) If a person or corporation files multiple claims in any one small claims court, the clerk of judge of the court may remove all but the initial claim from the court's calendar in order to dispose of all other small claims court matters. Claims so removed shall be rescheduled as permitted by the court's calendar.

78-6-1.5 Evening hours - Specially appointed judges pro-tempore.

If at any time public necessity and convenience will be better served by making the small claims court available during evening hours in addition to day-time settings, the circuit court may enter an order appointing a member or members of the Utah State Bar in good standing, with the member's consent, as small claims court judge(s) pro-tempore to hear and determine those small claims at times to be set by the court. Such specially appointed small claims court judge(s) pro-tempore, after being duly sworn, shall serve voluntarily and without compensation at the request of the court, shall be extended the same immunities, and shall have the same powers with respect to matters within the jurisdiction of the small claims court as may be exercised by duly elected circuit judges.



## Appendix I

### UTAH JUDICIAL CODE

78-6-8. Pleadings and hearings informal, exception - Attachment, garnishment, and execution may issue.

No formal pleading, other than the affidavit and notice, is necessary, and the hearing and disposition of the actions may be informal, except that the circuit court shall maintain the proceeding on the record as in any other case, with the sole object of dispensing speedy justice between the parties. Attachment, garnishment, and execution may issue after judgment in the manner prescribed by law upon the payment of the fees allowed by law for those services.

## Appendix J

### UTAH JUDICIAL CODE

78-6-10. Small claims - When conclusive - Exception - Appeal. - Attorney's fee.

(1) The judgment of the small claims department of the justices' and circuit court is conclusive upon the plaintiff unless a counterclaim has been interposed.

(2) If the matter is heard in the small claims department of the circuit court, the defendant may appeal the judgment of the circuit court to the Court of Appeals by filing a notice of appeal within five days of the entry of the judgment against him.

(3) If the matter is heard in the small claims department of the justices' court, the defendant may obtain a trial de novo in the circuit court by filing in the circuit court of the county a petition for trial de novo within five days of the entry of the judgment against him.